

United States District Court

For the Northern District of California

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10 IN THE UNITED STATES DISTRICT COURT
11 FOR THE NORTHERN DISTRICT OF CALIFORNIA

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15 SECURIMETRICS, INC.,

No. C 05-00917 CW

16 Plaintiff,

ORDER DENYING
DEFENDANT'S
MOTION TO DISMISS
AND DENYING
DEFENDANT'S
MOTION TO STRIKE
PLAINTIFF'S CLAIM
FOR PUNITIVE
DAMAGES

17 v.

18 HARTFORD CASUALTY INSURANCE
COMPANY,

19 Defendant.

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Plaintiff SecuriMetrics, Inc. filed this lawsuit against Defendant Hartford Casualty Insurance Company alleging that Defendant failed to provide insurance coverage in bad faith and breach of contract. Defendant moves pursuant to Federal Rule of Civil Procedure 12(b)(6) to dismiss the complaint for failure to state a claim upon which relief can be granted, and

1 alternatively to strike Plaintiff's request for punitive damages
2 under Federal Rule of Civil Procedure 12(f). Plaintiff opposes
3 the motion. This matter was heard on July 15, 2005. Having
4 considered the papers filed by the parties and oral argument on
5 the motion, the Court DENIES Defendant's motion to dismiss and
6 its motion to strike Plaintiff's request for punitive damages.

BACKGROUND

8 Plaintiff's complaint alleges the following. Defendant
9 issued Plaintiff a written insurance policy, Policy No. 57 SBA
10 AT8252 (the Policy), for the period February 28, 2003 to
11 February 28, 2004. Complaint ¶ 2. The Policy covered damages
12 Plaintiff might incur for offenses that caused "personal or
13 advertising injury" arising out of Plaintiff's business in the
14 United States during the policy period. The Policy also
15 required Defendant to defend Plaintiff in any suit seeking
16 damages for "personal and advertising injury." Complaint ¶ 6.
17 Plaintiff paid the Policy premium and satisfied all other
18 requirements of the Policy. Complaint ¶ 5.

In or about October, 2003, Iridian Technologies, Inc. (Iridian) filed a false counterclaim against Plaintiff, alleging that Plaintiff was liable for damages because of a "personal and advertising injury" caused by Plaintiff's offenses in the United States during the Policy period. Iridian's claim was covered by the Policy. Plaintiff made a timely demand on Defendant to defend it against Iridian's counterclaim, but Defendant refused. Complaint ¶ 7. At the time of Defendant's refusal, it knew that it was obliged to defend Plaintiff, and that it was violating

1 its duty of good faith and fair dealing in refusing to do so.

2 || Complaint

3 | ¶ 15.

4 Plaintiff alleges causes of action for breach of written
5 contract and tortious breach of the implied covenant of good
6 faith and fair dealing, and seeks a declaratory judgment that
7 Defendant is obliged to defend Plaintiff.

LEGAL STANDARD

9 || I. Dismissal Under Rule 12(b)(6)

A motion to dismiss for failure to state a claim will be denied unless it is "clear that no relief could be granted under any set of facts that could be proved consistent with the allegations." Falkowski v. Imation Corp., 309 F.3d 1123, 1132 (9th Cir. 2002), citing Swierkiewicz v. Sorema N.A., 534 U.S. 506 (2002). All material allegations in the complaint will be taken as true and construed in the light most favorable to the plaintiff. See NL Indus., Inc. v. Kaplan, 792 F.2d 896, 898 (9th Cir. 1986). A complaint must contain a "short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a). "Each averment of a pleading shall be simple, concise, and direct. No technical forms of pleading or motions are required." Fed. R. Civ. P. 8(e). These rules "do not require a claimant to set out in detail the facts upon which he bases his claim. To the contrary, all the Rules require is 'a short and plain statement of the claim' that will give the defendant fair notice of what the plaintiff's claim is and the grounds on which it rests." Conley v. Gibson, 355 U.S.

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1 41, 47 (1957).

2 II. Motion to Strike Under Rule 12(f)

3 Pursuant to Federal Rule of Civil Procedure 12(f), the
4 Court may strike from a pleading "any redundant, immaterial,
5 impertinent or scandalous matter." Fed. R. Civ. P. 12(f). The
6 purpose of a Rule 12(f) motion is to avoid spending time and
7 money litigating spurious issues. Fantasy, Inc. v. Fogerty, 984
8 F.2d 1524, 1527 (9th Cir. 1993), reversed on other grounds, 510
9 U.S. 517 (1994). Matter is immaterial if it has no essential or
10 important relationship to the claim for relief plead. Id.
11 Matter is impertinent if it does not pertain and is not
12 necessary to the issues in question in the case. Id. Rule
13 12(f) motions to strike are "generally not granted unless it is
14 clear that the matter sought to be stricken could have no
15 possible bearing on the subject matter of the litigation."
16 Rosales v. Citibank, Federal Sav. Bank, 133 F. Supp. 2d 1177,
17 1180 (N.D. Cal. 2001).

18 DISCUSSION

19 I. Motion to Dismiss Under Rule 12(b)(6)

20 A. Breach of Contract and Declaratory Relief

21 Defendant argues that the breach of contract claim and
22 request for declaratory judgment should be dismissed, because
23 plaintiff did not attach a copy of the contract to the complaint
24 or set forth the contract terms verbatim.

25 Defendant cites California State law and an unpublished
26 district court case for the proposition that a Plaintiff
27 pleading breach of contract must either attach a copy of the

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1 contract to the complaint or set forth the relevant contract
2 terms verbatim. See Otworth v. Southern Pacific Transportation
3 Co., 166 Cal. App. 3d 452, 459 (1985); Campbell v. Allstate Ins.
4 Cos., No. 95-1171, 1995 WL 376926, at *2 (C.D. Cal. May 17,
5 1995) (dismissing complaint under Rule 12(b)(6) for failure to
6 attach contract, citing California State law). However,
7 pleading is governed by Rule 8 of the Federal Rules of Civil
8 Procedure, not by State procedural requirements. Under Federal
9 Rule of Civil Procedure 8(a), a "short and plain statement of
10 the claim" suffices. The forms appended to the Federal Rules of
11 Civil Procedure note that "plaintiff may set forth the contract
12 verbatim in the complaint or plead it, as indicated, by exhibit,
13 or plead it according to its legal effect." Fed. R. Civ. P.
14 Official Form 3, 12; see also 5 Charles Alan Wright & Arthur R.
15 Miller, Federal Practice & Procedure § 1235 (2004). These forms
16 are declared to be sufficient by Federal Rule of Civil Procedure
17 84.

18 Here, Plaintiff has plead the "legal effect" of the
19 contract as required by Federal Rule of Civil Procedure 8, and
20 has alleged sufficient facts to enable Defendant to understand
21 and respond to its claims. The complaint alleges that the
22 Policy covered damages that Plaintiff incurred for offenses
23 causing "personal and advertising injury," and that the Policy
24 required Defendant to defend Plaintiff in suits seeking damages
25 for such injury. The complaint further states that Iridian's
26 counterclaim alleged "personal and advertising injury" and was
27 covered by the Policy, but that Defendant refused to defend

1 Plaintiff against the counterclaim. Federal law does not
2 require Plaintiff to recite the contract terms verbatim or to
3 attach a copy of the contract to the complaint.

4 Therefore, Defendant's motion to dismiss the first claim
5 for breach of contract and the request for declaratory judgment
6 is denied.

7 B. Breach of Implied Covenant of Good Faith and Fair
8 Dealing

9 Defendant argues that Plaintiff's claim for breach of
10 implied covenant of good faith and fair dealing should be
11 dismissed because Plaintiff does not allege facts necessary to
12 support a "bad faith" claim.

13 Under California law, "[b]ad faith implies unfair dealing
14 rather than mistaken judgment or poor prognostication." Critz
15 v. Farmers Ins. Group, 230 Cal. App. 2d 788, 796 (1964),
16 disapproved on other grounds, Crisci v. Security Ins. Co., 66
17 Cal. 2d 425 (1967). Thus, "the ultimate test of liability . . .
18 is whether the refusal to pay policy benefits was unreasonable."
19 Austero v. National Cas. Co., 84 Cal. App. 3d 1, 32 (1978).

20 Here, Defendant argues that Plaintiff has failed to plead
21 any facts showing the unreasonableness of Defendant's refusal to
22 defend. However, the complaint alleges not only that Defendant
23 erred in denying coverage, but that it "knew that it was
24 obligated to defend SecuriMetrics, but nonetheless failed and
25 refused to do so," and that it "knew that it was acting in
26 violation of its duty of good faith and fair dealing."
27 Plaintiff's allegations that Defendant knowingly refused to

1 fulfill its obligations demonstrate unreasonableness, not mere
2 "mistaken judgment," and so support a claim of bad faith.

3 Therefore, Defendant's motion to dismiss the second cause
4 of action for breach of the implied covenant of good faith and
5 fair dealing is denied.

6 II. Motion to Strike Under Rule 12(f)

7 Defendant contends that Plaintiff's request for punitive
8 damages should be stricken as "redundant, immaterial,
9 impertinent or scandalous," because Plaintiff fails to plead
10 facts sufficient to support such a request.

11 Under the California Civil Code, punitive damages are
12 awarded only where the "defendant has been guilty of oppression,
13 fraud, or malice. . ." Cal. Civil Code § 3294; see also Silberg
14 v. California Life Ins. Co., 11 Cal. 3d 452, 462-63 (1974)
15 (holding that defendant's breach of implied covenant of good
16 faith and fair dealing, without separate showing of intent to
17 injure plaintiff, did not justify punitive damages award).

18 Here, Defendant claims that Plaintiff has failed to allege
19 facts showing the "oppression, fraud or malice" required for an
20 award of punitive damages. However, as discussed above, the
21 complaint does not allege mere negligence by Defendant, but
22 instead claims that Defendant "knew it was acting in violation
23 of its duty of good faith and fair dealing" and "knew it was
24 obligated to defend SecuriMetrics, but nonetheless failed and
25 refused to do so." Plaintiff's request for punitive damages is
26 supported by its allegations of Defendant's intentional refusal
27 to defend Plaintiff, and is not "redundant, immaterial,

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1 impertinent or scandalous matter."

2 Therefore, Defendant's motion to strike Plaintiff's request
3 for punitive damages is denied.

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8 CONCLUSION

9 For the foregoing reasons, Defendant's motion to dismiss
10 the complaint and to strike Plaintiff's request for punitive
11 damages (Docket #5) is DENIED.

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13 IT IS SO ORDERED.

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15 Dated: 7/21/05

/s/ CLAUDIA WILKEN
CLAUDIA WILKEN
United States District
Judge

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